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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL I. ELLINGTON,

Defendant and Appellant.

F045347

(Super. Ct. No. BCR09554)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Madera County. John W. DeGroot, Judge.

M. Sue Jackson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Louis M. Vasquez and Kelly C. Fincher, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Wiseman, Acting P.J., Levy, J., and Dawson, J.

Appellant, Michael Ilario Ellington, pled guilty to possession of cocaine (Health & Saf. Code, § 11350). On April 4, 2002, he was placed on felony probation for three years. On February 6, 2004, after a hearing, the court found that Ellington violated his probation. On April 6, 2004, the court revoked Ellington's probation and sentenced him to the aggravated term of three years. On appeal, Ellington contends the court erred when it imposed a fine pursuant to Penal Code section 672.<sup>1</sup> We agree with Ellington and will modify the judgment accordingly. In all other respects we will affirm.

### **FACTS**

On August 11, 2001, a Madera police officer arrested Ellington after finding him inebriated, lying on the roadway. A search of Ellington uncovered a plastic baggie containing a small amount of rock cocaine.

On April 6, 2004, following several probation violations the court revoked Ellington's probation and sentenced him to prison for the aggravated term of three years. The court also imposed a \$200 restitution fine (§ 1202.4, subd. (b)), a \$200 parole revocation fine (§ 1202.45), a laboratory analysis fee of \$157.50, a \$220.50 fine pursuant to Health and Safety Code section 11350, subdivision (c), and a \$315 fine pursuant to section 672.<sup>2</sup>

### **DISCUSSION**

Ellington contends that the court's imposition of a fine pursuant to Health and Safety Code section 11350, subdivision (c) prohibited it from imposing a fine pursuant to section 672. Respondent concedes and we agree.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> Presumably these last two fines included various penalty and surcharges pursuant to sections 1464 and 1465.7 and Government Code section 76000.

Section 672 provides: “Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding one thousand dollars (\$1,000) in cases of misdemeanors or ten thousand dollars (\$10,000) in cases of felonies, in addition to the imprisonment prescribed.”

In *People v. Breazell* (2002) 104 Cal.App.4th 298, this court held that section 672 “was intended to provide a fine for offenses for which no other statute imposes a fine.”

Here, since the court imposed a fine pursuant to Health and Safety Code section 11350, subdivision (c), it was precluded from imposing one pursuant to section 672.

### **DISPOSITION**

The judgment is modified to strike the \$315 fine imposed pursuant to section 672. The trial court is directed to prepare an amended abstract of judgment consistent with this opinion and to forward a certified copy to the Department of Corrections. As modified, the judgment is affirmed.